

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL FIORITO,  
Petitioner,  
v.  
WARDEN BREWER,  
Respondent.

No. 2:23-cv-0206 KJN P

ORDER

Petitioner is a federal prisoner, proceeding pro se and in forma pauperis, with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On April 5, 2023, petitioner filed a request for clarification. He claims he has recently filed three separate § 2241 petitions, but one was incorrectly construed as an amended petition in the instant action, and he has not received a case number for the third petition he mailed to the court.<sup>1</sup>

New § 2241 Action

In light of petitioner's request, the Clerk of the Court is directed to file petitioner's March 17, 2023 document (ECF No. 8) as an original petition in a new § 2241 action, nunc pro tunc as of March 17, 2023, along with the March 28, 2023 order (ECF No. 9), a copy of the motion to

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<sup>1</sup> Petitioner is advised that there is no record of the court receiving the third petition related to the alleged false incident report issued while he was housed in Minnesota. At present, court records reflect only cases 2:22-cv-2269 AC and 2:23-cv-0206 KJN P filed by petitioner.

1 proceed in forma pauperis (ECF No. 2), and a copy of the instant order. Petitioner is granted  
2 leave to proceed in forma pauperis in the new action.

3 The United States Attorney is put on notice that the March 28, 2023 order remains in full  
4 force and effect, except that the respondent shall file its response using the newly assigned case  
5 number.

6 The Instant Action: 2:23-cv-0206 KJN P

7 The instant action now proceeds on the original petition. (ECF No. 1.)

8 Because petitioner may be entitled to the requested relief if the claimed violation of  
9 constitutional rights is proved, respondent is directed to file an answer or a motion to dismiss. In  
10 addition, petitioner moves for emergency injunctive relief, claiming he is being held beyond his  
11 release date. Petitioner states that due to a computer glitch, his one-year credit was erased and  
12 has not been fixed, which jeopardizes his projected prerelease custody or supervised release date  
13 of between March and July 2023, “if not sooner.” (ECF No. 1 at 5.)

14 Respondent is directed to file a response to petitioner’s motion within thirty days.

15 Orders

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Petitioner’s request for clarification (ECF No. 13) is granted.

18 2. The Clerk of the Court is directed to file petitioner’s March 17, 2023 document (ECF  
19 No. 8) as an original petition in a new § 2241 action, nunc pro tunc as of March 17, 2023, along  
20 with copies of the March 28, 2023 order (ECF No. 9), petitioner’s motion to proceed in forma  
21 pauperis (ECF No. 2), and the instant order. Petitioner is granted leave to proceed in forma  
22 pauperis in the new action.

23 3. The Clerk of the Court shall assign the new action to the undersigned magistrate judge  
24 and make appropriate adjustment in the assignment of civil cases to compensate for this direct  
25 assignment.

26 4. The United States Attorney is put on notice that the March 28, 2023 order remains in  
27 full force and effect, except that the respondent shall file its response using the newly assigned  
28 case number.


1           5. The Clerk of the Court shall strike the March 17, 2023 filing (ECF No. 8) from the  
2 record of the instant action. This case proceeds on the original petition (ECF No. 1).

3           6. Respondent is directed to file an answer or a motion to dismiss within thirty days from  
4 the date of this order. If an answer is filed, respondent shall include with the answer any and all  
5 transcripts or other documents relevant to the determination of the issues presented in the  
6 application.

7           7. Petitioner's traverse, if any, is due on or before thirty days from the date respondent's  
8 answer is filed; an opposition to a motion to dismiss is due within thirty days of service of the  
9 motion to dismiss.

10          8. The Clerk of the Court shall serve a copy of this order on the United States Attorney.  
11 The U.S. Attorney has already been provided with copies of both § 2241 petitions. (ECF No. 5,  
12 9.)

13 Dated: April 21, 2023

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15 KENDALL J. NEWMAN  
16 UNITED STATES MAGISTRATE JUDGE

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